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THE COMMONWEALTH OF MASSACHUSETTS
Office of the Secretary of State

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 301 CMR 25.00

CHAPTER TITLE: Designation of Port Areas

AGENCY: Executive Office of Environmental Affairs

SUMMARY OF REGULATION

State the general requirements and purposes of this regulation: These regulations set for a procedure to be followed by the Massachusetts Coastal Zone Management (MCZM) Office in establishing and modifying the boundaries of Designated Port Areas (DPAs). These regulations complement and work in conjunction with provisions of the waterways regulations (310 CMR 9.00) governing the licensing of structures and uses in DPAs, and with the provisions of the municipal harbor plan regulations (301 CMR 23.00) governing review and approval of DPA Master Plans.

REGULATORY AUTHORITY: M.G.L. C.21A, S.2 and 4A

AGENCY CONTACT: Margaret M. Brady PHONE: 617-727-9530

ADDRESS: 100 Cambridge Street, Boston, MA 02202

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION

If this regulation is adopted as an emergency regulation, state the nature of the emergency.

PRIOR NOTIFICATION AND/OR APPROVAL

If prior notification to and/or approval of the Governor, legislature or others was required, list each notification, approval and date, including notice to the Local Government Advisory Commission:

Local Government Advisory Committee: Notification 2/11/94

Executive Office of Communities and Development: Notification 2/11/94

Secretary of State: Notification 2/11/94

PUBLIC REVIEW

Was notice of the hearing or comment period filed with the Secretary of State published in appropriate newspapers and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period?

Yes ☒ Date of public hearing or comment period: Public Hearings March 22/23/24, 1994; Public comment period closed April 29, 1994

FISCAL EFFECT

Estimate the fiscal effect on the public and private sectors:

For the first and second years:

For the first five years:

No fiscal effect:

No fiscal effect on the private sector is anticipated. Within the public sector, the federally funded MCZM Plan will provide the staffing (approx. one FTE) necessary to carry out an initial set of DPA boundary reviews during the first and second year. Thereafter, the fiscal effect will vary depending on the need for additional review as requested by municipalities or other parties.

SMALL BUSINESS IMPACT

State the impact of this regulation on small business. Include a description of reporting, record keeping and other compliance requirements as well as the appropriateness of performance versus design standards and whether this regulation duplicates or conflicts with any other regulation. If the purpose of this regulation is to set rates for the state this section does not apply. The regulations have no direct impact on small business. Within DPAs it is the policy of the Commonwealth to promote maritime business development, a beneficial effect. To the extent that the regulations establish a procedure by which areas unsuitable for water dependent industry will be removed from existing DPAs, non-maritime businesses in such areas will benefit from the corresponding removal of certain regulatory restrictions under 310 CMR 9.00.

CODE OF MASSACHUSETTS REGULATIONS INDEX

List key subjects entries that are relevant to this regulation:

Coastal Zone Management

Waterways; Designated Port Areas; Municipal Plans

PROMULGATION

State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) to repeal, replace or amend. List by CMR number:

New

ATTESTATION

The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST.

Signature: Robert Cox

Date: Oct. 6, 1994

Publication To be completed by the Regulations Division

MASSACHUSETTS REGISTER NUMBER: 750

DATE: 10/21/94

EFFECTIVE DATE: 12/15/94

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages:

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237, 238

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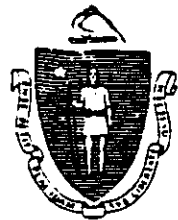
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A TRUE COPY ATTEST

Michael Joseph Connolly

MICHAEL JOSEPH CONNOLLY
SECRETARY OF STATE

DATE 10/17/94 CLERK [Signature]



COASTAL ZONE
MANAGEMENT

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

THE 1994 DESIGNATED PORT AREA (DPA) REGULATIONS

Introduction

Massachusetts is an authentic seafaring state where, since colonial times, the waterfront at work has been one of the defining aspects of our culture and our prosperity. Coastal facilities for commercial fishing, for shipping materials and goods, for ferrying passengers, for building and servicing vessels of every description, and for myriad other aspects of port operation are an indispensable part of the intermodal transportation network, serving to link the pathways of commerce upon the ocean with those traversing the land. The water-dependent industrial sector also includes many critical production activities -- like fish processing, power generation, manufacturing, and wastewater treatment -- that utilize large volumes of water or otherwise are functionally connected to the ocean. While such uses vary widely in scale and intensity, as a group all have been instrumental in making the coastal zone of Massachusetts as productive an economic resource as it is an environmental one.

Essential to the pursuit of any type of maritime industry is the presence of appropriate port infrastructure, consisting of three basic components:

- * a waterway and associated waterfront that have been developed for commercial navigation;
- * land area adjoining the water's edge that is conducive in both physical configuration and use character to the siting of industrial operations; and
- * land-based transportation and public utility services appropriate for general industrial purposes.

The Commonwealth has relatively few stretches of coastline where all three of these attributes have been established in combination, especially to a degree sufficient to invite concentrations of related businesses and/or large scale facilities. What's more, over the years the amount of fully industrialized shoreline has

diminished as a result of steadily increasing pressure for conversion to non-industrial and nonwater-dependent uses, despite the fact that such uses have no special operational requirements and thus a comparatively unlimited range of locational options.

The gentrification of industrial shorelands is a worrisome trend because the lost space is virtually irretrievable, in large part because the impediments to replacement are nearly impossible to overcome. Creating new infrastructure elsewhere requires dredging deep channels and turning basins, altering natural shorelines with extensive fill and structures, and encroaching upon upland resource or developed areas to connect into existing transportation/utility networks. Such measures are now prohibitively costly both in monetary and environmental terms, and can always be expected to encounter acute political resistance from the public. Similarly, it would be unrealistic to envision that any meaningful "reclamation" might occur where previously well-developed port space has been given over to housing, office, and mixed-use development. Although the channels and bulkheads will still exist, and a truck route or possibly a rail right-of-way may remain, what is permanently eliminated is the gritty character of working places and with it the legitimacy of industrial endeavor in the mind's eye of both the adjoining neighborhood and the community at large.

It is impossible to foresee all future space needs of coastal industry, and thus predict whether the present stock of worksites on the waterfront is adequate to meet those needs. But it can be said with certainty that to allow further significant depletion of basic port infrastructure -- a non-renewable resource -- is to greatly increase the risk of experiencing capacity shortfalls in the future. The unavoidable consequence will be to forego potentially major opportunities for growth in the maritime sector of the economy. It is critical to recognize that for Massachusetts to take maximum advantage of such opportunities in the future, it is essential to preserve what remains of the industrialized coast in the present.

The DPA Program of CZM and DEP

More than 15 years ago the Massachusetts Coastal Zone Management (MCZM) Office established a policy for ensuring that coastal development by water-dependent industry could be accommodated on a sustainable basis. The basic premise was this: it makes both good environmental and good economic sense to steer future maritime commerce into harbor areas that have already been altered extensively -- at great public expense -- to meet the special operational requirements of such commerce. Accordingly, in close consultation with municipal planners and leaders of the marine business community, the 1978 MCZM Plan identified twelve specific Designated Port Areas (DPAs) as the primary "host" sites

to meet both the foreseeable and the unanticipated space needs of industrial uses that depend on proximity to a waterway, either for the transportation of goods/passengers or the withdrawal/discharge of large volumes of process water.

In keeping with the MCZM Plan, since 1979 the waterways regulations of the Department of Environmental Protection (DEP) have included provisions to prevent development with an exclusionary effect upon water-dependent industry in any DPA. Originally these restrictions applied only in the waterway itself because state jurisdiction under M.G.L. c. 91 ended at the high water mark. However, in 1984 the legislature expanded the licensing authority of DEP to include filled tidelands, thereby allowing the policy of protection to be enforced on the land side as well. Major modifications to the waterways regulations followed in 1990, which established a prohibition on most non-industrial uses on DPA lands and also imposed limits (in space and time) on the extent to which nonwater-dependent industrial activities were allowed to occur.

Despite the general strictness of the 1990 waterways regulations, it should be emphasized that state policy governing the regulation of DPAs is one of flexible protectionism, in two important respects. First, DPAs have never been treated as pure land banks in which space not presently utilized for water-dependent industry is off-limits to other productive enterprise. Instead, CZM and DEP believe that a substantial amount of non-maritime development can occur in a DPA under the appropriate circumstances, in a way that not only avoids long-term exclusion of marine commerce but even provides it with significant economic or operational support on an interim basis. Second, DPAs have not been viewed as places that necessarily cut-off a community from its harbor, or necessarily require toleration of undue side effects on the part of nearby residential areas. To the contrary, CZM and DEP believe that judicious planning of the use mix in the DPA and its environs, together with compatible incorporation of public access facilities into the design of individual projects, can advance the quality-of-life objectives of the surrounding community without significant interference with maritime activities at or near the waterfront.

Working within this policy framework during recent years, both the planning staff at CZM and the regulatory staff at DEP have become increasingly knowledgeable about existing land use patterns and development prospects in the DPAs. This experience, gained through in-house study as well as frequent consultation with municipal planners and public advocacy organizations, has pointed to certain improvements that should be made in the existing body of state regulations affecting DPAs, in order to increase overall program effectiveness. Responding directly to this need, the respective agencies drafted a three-part set of proposed regulations for public review, and in Spring 1994 held public

hearings in each of the Commonwealth's primary port cities of Boston, Gloucester, and New Bedford. Subsequent written comments were received from 22 individuals and organizations, who expressed strong support for the overall initiative and recommended a number of changes on behalf of greater clarity, streamlined implementation, and more effective coordination with municipal planning and regulatory efforts. Having made such changes, it is our belief that all key concerns expressed by the commentators have been well-addressed in the final text of the regulations.

Summary of the New Regulatory Initiatives

Each of the regulations being promulgated and the reasons for the respective agency actions are summarized below.

INITIATIVE NO.1: Add a new section to the CZM regulations (301 CMR 25.00) to establish uniform procedures and standards for modifying the boundaries of existing DPAs and for creating new ones.

Due to the lack of state authority to regulate DPA land uses prior to the mid-80s, development of a non-industrial character has rendered certain properties unsuitable for the resumption of maritime commerce to any significant degree, and it is no longer appropriate for such properties to be subject to licensing restrictions intended to protect working waterfronts from incompatible development. Conversely, since port development and related infrastructure improvement are priorities of the Secretary of Environmental Affairs, it may be that additional segments of the industrialized coast should be afforded the heightened regulatory protection that comes with inclusion in a DPA.

Accordingly, MCZM has adopted a straightforward procedure for determining which segments of the coastal zone should be included in or remain in a DPA, based on a clarified version of the original suitability criteria. The procedure is divided into two basic phases, both of which are subject to timelines:

- * a study phase, which includes solicitation of informal public input, fact-finding by CZM/DEP in consultation with municipal representatives, and issuance of a written report with findings and a proposed designation action; and

- * a decision phase, consisting of further solicitation of public input through formal hearings and comment period, followed by issuance of a final decision and map amendment.

CZM will follow this procedure in carrying out an initial series of reviews of existing DPAs, with priority assigned to communities where boundary review should be expedited in conjunction with a rezoning program or other municipal planning effort. The target timeframe for the initial reviews is two years, after which

additional reviews can be triggered periodically upon the request of a municipality, landowner, or other specified parties.

INITIATIVE NO. 2: Amend the DEP Waterways Regulations (310 CMR 9.00) to replace most prohibitions on commercial uses in a DPA with licensing requirements to ensure such uses will occur in a supporting and compatible manner.

Survey work has indicated that DPAs often contain limited amounts of commercial uses of a type that can mix compatibly with and not seriously alter the "working" character of the area. In fact, there are several cases where commercial facilities (e.g. popular waterfront restaurants) traditionally have provided very beneficial support to water-dependent industrial uses (e.g. commercial fishermen), and in such relationships there lies considerable potential to serve DPA promotional interests in the long run.

Accordingly, the waterways regulations of DEP have been amended so that most commercial uses are now eligible for licensing as a Supporting DPA Use, subject to certain criteria to ensure the project will provide greater benefit than detriment to port preservation interests. Commercial uses will now be allowed to occupy up to 25% of an individual project site, or a higher percentage if provided for in a DPA Master Plan prepared (voluntarily) by the municipality and approved in accordance with CZM harbor planning regulations (see Initiative No. 3, below). The DPA Master Plan also would be used to establish, in advance of individual project applications, which industrial and/or commercial uses allowable under the municipal zoning code shall qualify as a Supporting DPA Use.

INITIATIVE NO. 3: Amend the CZM Harbor Planning regulations (301 CMR 23.00) by adding a set of standards for the approval of DPA Master Plans prepared by a municipality.

In many communities the DPAs remain essentially unplanned in terms of promoting maritime development, preventing commitments to other uses that would significantly exclude water-dependent industrial activity, and accommodating supporting industrial and commercial uses in a conflict-free manner. Symptomatic of this problem is the fact that most zoning ordinances applicable to the working waterfront pre-date the 1990 promulgation date of the DEP waterways regulations, resulting in the potential for significant inconsistency between state and local decision-making.

To establish a formal mechanism by which such inconsistencies can be resolved in an orderly and constructive manner, CZM has amended the harbor planning regulations to allow municipalities to

develop a DPA Master Plan as a separate component of a municipal harbor plan. Approval of a DPA plan will be governed by a special set of criteria that are designed to produce state/local agreement as to the roster of prohibited and allowable uses within various segments of the DPA, as well as a strategy for the cooperative promotion of water-dependent industrial use in particular. No new procedures are needed to review DPA Master Plans, because the existing regulations already allow for the segmentation of harbors into distinct geographic districts for plan approval purposes.

October 14, 1994

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301 CMR 25.00: DESIGNATION OF PORT AREAS

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- 25.03: Designation Procedures
- 25.04: Designation Standards
- 25.05: DPA Boundary Maps
- 25.06: Miscellaneous

25.01: Authority and Purpose

(1) Authority. Pursuant to the authority of M.G.L. c. 21A, §§ 2 and 4A, 301 CMR 25.00 is adopted by the Secretary as a means of fulfilling the statutory responsibility of the Executive Office of Environmental Affairs to serve as the primary agency of the Commonwealth for environmental planning, as set forth in M.G.L. c. 21A, §§ 2 and 4; and to implement the Massachusetts Coastal Zone Management (CZM) Program, established by M.G.L. c. 21A, § 4A for the purpose of securing for the inhabitants of the Commonwealth the objectives and benefits of the Federal Coastal Zone Management Act, 16 USC 1451 *et seq.* 301 CMR 25.00 forms part of the CZM Program and shall be interpreted and applied in a manner consistent therewith.

(2) Purpose. 301 CMR 25.00 sets forth a procedure for establishing and modifying the boundaries of Designated Port Areas. The CZM Program since 1978 has identified DPAs as geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water. These water-dependent industrial uses vary in scale and intensity but generally share a need for infrastructure with three essential components: a waterway and associated waterfront that has been developed for some form of commercial navigation or other direct utilization of the water; backland space that is conducive in both physical configuration and use character to the siting of industrial facilities and operations; and land-based transportation and public utility services appropriate for general industrial purposes.

This special combination of industrial attributes is found in a very limited and diminishing portion of the coastal zone, and particularly few areas are of sufficient contiguous extent to invite concentrations of related businesses and/or large scale facilities. Because economic, environmental, and social factors now virtually preclude further development of such an intensive nature, what remains of the industrialized coast should be preserved to the maximum extent practicable in order to meet the long term, cumulative space needs of the water-dependent industries which these areas are so well-suited to accommodate. As a matter of state policy, it is not desirable to allow these scarce and non-renewable resources of the marine economy to be irretrievably committed to, or otherwise significantly impaired by, non-industrial or nonwater-dependent types of development which enjoy a far greater range of locational options.

Accordingly, within DPAs it is the intent of the CZM Program to encourage water-dependent industrial use and to prohibit, on tidelands subject to the jurisdiction of M.G.L. c. 91, other uses except for compatible public access and certain industrial, commercial, and transportation activities that can occur on an interim basis without significant detriment to the capacity of DPAs to accommodate water-dependent industrial use in the future.

The additional purposes served by 301 CMR 25.00 are as follows:

- (a) to carry out overall state growth policy by encouraging further maritime build-out of existing industrialized waterfronts, in order to both minimize incremental detriments to the environment and maximize the effective return on prior expenditures for port infrastructure;

25.01: continued

(b) to carry out overall state environmental policy by, among other things, providing for the management of land and water resources to assure the protection and balanced utilization of such resources; promoting the best usage of land and water by encouraging and providing for, in cooperation with other appropriate state agencies, planned industrial, commercial, and community development; and assisting other state and regional agencies in developing programs and policies relating to land use planning and regulation in the Commonwealth; and

(c) to comply with and implement national coastal policy as set forth in the Federal Coastal Zone Management Act of 1972, as amended, by giving priority consideration to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, ports and transportation, and to the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists.

25.02: Definitions

Coastal Zone means that area subject to the CZM program and defined in 301 CMR 20.03 and 20.99.

CRAB means the Coastal Resources Advisory Board.

CZM means the Massachusetts Coastal Zone Management Office.

CZM Program means the Massachusetts Coastal Zone Management Program established pursuant to M.G.L. c. 21A and codified in 301 CMR 20.00, and as may be amended hereafter.

DEP means the Department of Environmental Protection.

Design Depth means the required project depth, as measured at mean low water, specified in the applicable authorizing documents for a navigation project carried out by a public agency responsible for channel construction. In the event multiple construction projects have been carried out in a channel, the design depth shall be the deepest of the required depths specified for the respective projects.

Director means the Director of the Coastal Zone Management Office as provided in M.G.L. c. 21A, § 4A, as amended in St. 1983, c. 589.

Designated Port Area (DPA) means an area of contiguous lands and waters in the coastal zone that has been so designated in accordance with 301 CMR 25.00. Until such time as any further designation decisions are made pursuant thereto, the DPA boundaries shall be as indicated on the Appendix A maps of the original waterways regulations of DEP, effective September 15, 1978, and as said maps have been amended prior to December 15, 1994. Official copies of the original maps and of any superseding maps indicating the most current DPA boundaries are available from the CZM Office.

Environmental Monitor means the publication published by the Secretary and further described in 301 CMR 11.19.

EOEA means the Executive Office of Environmental Affairs.

Person means any individual, partnership, trust, firm, corporation, association, commission, district, department, board, municipality, public or quasi-public agency or authority.

Planning Representative means the person(s) designated by the municipal official to represent the municipality in all proceedings under 301 CMR 25.00.

Public Agency means any agency, department, board, district, commission, or authority of the Commonwealth or the United States, or of any municipality or other political subdivision of the Commonwealth.

25.02: continued

Massport means the Massachusetts Port Authority, a body politic incorporate established and operating pursuant to St. 1956, c. 465, as amended. For purposes of 301 CMR 25.00 Massport shall be considered a state agency.

Municipal Official means the mayor of a city, the board of selectmen of a town, or the council of a municipality having a manager-council form of government.

Requesting Party means any person eligible to request the initiation of a DPA review, as listed in 301 CMR 25.03(1).

Secretary means the Secretary of Environmental Affairs.

State Agency means a public agency of the Commonwealth.

Tidelands means present and former submerged lands and tidal flats lying between the present or historic high water mark, whichever is farther landward, and the seaward limit of state jurisdiction. Tidelands include both flowed and filled tidelands as defined in 310 CMR 9.02.

Water-dependent Industrial Use means any use found to be such in accordance with 310 CMR 9.12(2)(b).

Waterway means any area of water and associated submerged land or tidal flat lying below the high water mark of any navigable river or stream, any Great Pond, or any portion of the Atlantic Ocean within the Commonwealth, which is subject to the waterways regulations at 310 CMR 9.04.

Waterways Regulations means the regulations established by DEP under M.G.L. c. 91, at 310 CMR 9.00 and as may be amended hereafter.

25.03: Designation Procedures

(1) Initiation of Review. CZM shall from time to time carry out reviews under these regulations to determine whether particular areas of land or water shall be included or remain in an existing DPA, or form a new DPA. Within 60 days of the effective date, an initial series of reviews shall be commenced to determine whether the boundaries of existing DPAs should be modified. Except as provided in 301 CMR 25.03(2), the initial review of an existing DPA shall cover all areas for which the planning representative of the municipality provides CZM with an assessors map and mailing addresses for all persons owning property within such areas, as shown on the most recent applicable tax list of the assessors. Further, in the event a municipality submits a complete request for Scope of a DPA Master Plan in accordance with 301 CMR 23.03, the initial review of the DPA in question shall commence within 30 days after submission of such complete request.

Except as provided in 301 CMR 25.03(2), at any time after December 15, 1996, the Director also may carry out a review upon the written request of:

- (a) the municipal official or planning board, or the City Council or other municipal body with authority to enact zoning, of the municipality where the area proposed for review is located;
- (b) any port authority or other state or regional agency with planning, regulatory, or development authority over the area proposed for review;
- (c) the owner(s) of the area proposed for review; or
- (d) any ten citizens of the Commonwealth.

25.03: continued

Such written request shall be accompanied by an assessors map and mailing addresses for all persons owning property within the area proposed for review, as shown on the most recent applicable tax list of the assessors; and by preliminary documentation prepared in accordance with any content and format instructions provided by CZM, with whom advance consultation is encouraged in order to obtain guidance as to the minimum information submittal necessary for the request to be completed. Within 45 days of receiving a completed request, the Director shall determine in writing whether the request for review has been accepted or declined, and shall summarize the reasons for the determination. In the event a request for review is accepted, the Director may require that additional information be provided by the requesting party, in accordance with any written guidelines that may be provided by CZM.

(2) Areas Not Eligible for Review. The following areas shall not be included in any review carried out under 301 CMR 25.00:

- (a) any area that has been the subject of a designation decision under 301 CMR 25.03(5) within the previous five years, except upon a demonstration by a requesting party that substantial and rapid change has occurred in circumstances affecting the suitability of the area to accommodate water-dependent industrial use, as governed by the designation standards set forth in 301 CMR 25.04;
- (b) any area within a DPA on which water-dependent industrial use has occurred within the previous five years, unless the use:
 - 1. did not take place on a reasonably continuous basis, for a substantial period of time; or
 - 2. has been or will be discontinued voluntarily by the user;
- (c) any area within a DPA that is recommended for exclusion from review by the City Council or other municipal body with authority to enact zoning, unless the area is the site of a proposed project which is exempt by law from compliance with zoning or has been granted relief from the use restrictions applicable under zoning; and
- (d) any land area within a DPA that is entirely bounded by existing DPA lands and/or by any waters.

(3) Information Gathering Process. CZM shall carry out all DPA reviews in accordance with the following provisions:

- (a) Notice of the review shall be published in the *Environmental Monitor* and, on or before the date of such publication, in a local newspaper of general circulation. A copy of the notice shall be sent to CRAB and to all public agencies and other persons identified in 301 CMR 25.06(5), and to all property owners identified on any list provided in accordance with 301 CMR 25.03(1).
- (b) For a period of 30 days after publication of the notice in the *Environmental Monitor*, CZM shall accept public comments relative to areas and issues that might be addressed in the review. Within this comment period, a public information meeting shall be convened in the municipality where the area subject to review is located, and CZM shall also confer as appropriate with CRAB. CZM may extend the public comment period upon the request of any interested person, and shall publish notice of any extension in the next available edition of the *Environmental Monitor*.
- (c) Upon the close of the public comment period, CZM shall arrange a consultation session involving one or more meetings with the planning representative of any affected municipality and with DEP. As appropriate the Director shall also consult with Massport, the operators of water-dependent industrial facilities in the DPA, and any other public agencies or persons with expertise related to the designation standards of 301 CMR 25.04.

The purpose of the consultation session is to obtain further input and assistance in conducting the review. A work plan shall be established that identifies, among other things, the scope of any additional information that needs to be compiled together with an appropriate division of information-gathering responsibility. The participating agencies shall adopt a target schedule for the information-gathering process, which shall not exceed six months except as the participating agencies may otherwise agree. If the accuracy or appropriateness of any factual information gathered during the consultation session is disputed by the planning representative of an affected municipality, or by any participating agency, the Director shall seek to resolve the dispute through appropriate mediation measures.

25.03: continued

(d) Within 30 days after the close of the consultation session, CZM shall issue a written designation report for public review and comment. The report shall indicate which areas CZM proposes to include and/or exclude from a DPA, and shall include a map(s) showing all proposed changes to existing boundaries and/or specifications of new boundaries. The report shall set forth the data and analysis on which the proposed map amendments are based, in accordance with the designation standards set forth in 301 CMR 25.04.

(4) Public Comment on Designation Report. CZM shall solicit public response to the designation report in accordance with the following provisions:

(a) A notice of availability of the report and of the location and date of the public hearing scheduled in accordance with 301 CMR 25.04(4)(c) shall be published in the next available edition of the *Environmental Monitor* and, on or before the date of such publication, in a local newspaper of general circulation. A copy of the notice shall be sent to the relevant planning representative(s) and to all public agencies and other persons identified in 301 CMR 25.06(5).

(b) For a period of 30 days after publication of the notice in the *Environmental Monitor*, CZM shall accept public comments on the designation report. CZM may extend the public comment period upon the request of any interested person, and shall publish notice of any extension in the next available edition of the *Environmental Monitor*.

(c) A public hearing shall be held by CZM prior to the close of the public comment period and within any municipality where the area subject to review is located.

(5) Issuance of Designation Decision and Map Amendment. Within 60 days after the close of the public comment period, the Director shall issue a final written designation decision stating whether the area(s) under review shall be included within a DPA, in accordance with the designation standards set forth at 301 CMR 25.04. The decision shall include an amended map(s) showing the modified or new boundaries of the DPA, and shall state the reasons for any boundary changes relative to the map previously proposed in the designation report. The Director may qualify, limit, or otherwise condition the designation decision in any manner that serves the purposes of these regulations, and the decision shall take effect immediately upon the date of issuance. A copy of the decision shall be sent to the relevant planning representative(s), to all public agency representatives with whom consultation occurred, and to any other person on request. Notice of the decision shall be published in the next available edition of the *Environmental Monitor*, and a copy of the notice shall be sent to all public agencies and other persons identified in 301 CMR 25.06(5).

25.04: Designation Standards

(1) Designation of Waters. An area of water reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with the following criteria governing suitability to accommodate water-dependent industrial use, as appropriate to the harbor in question:

(a) the water area must include, or be contiguous with other DPA waters that include:

1. a navigable entrance or main channel with a design depth of at least 20 feet; and
2. a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a land area meeting the criteria set forth in 301 CMR 25.04(2); and

(b) the water area must be of a configuration, size, and location appropriate for the maneuvering or berthing of vessels, the placement of intake/outfall structures, or other activities involving direct utilization of the water; at a minimum, the Designated Port Area shall include:

1. all channels (including sloped sides necessary to create actual depth), mooring and turnaround areas within or serving as access channels to land or water areas meeting the designation standards of 301 CMR 25.04; and
2. any water area lying between an entrance or main channel and any land or water areas meeting the designation standards of 301 CMR 25.04, extending channelward from such areas.

25.04: continued

(2) Designation of Lands. An area of land reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with the following criteria governing suitability to accommodate water-dependent industrial use, as appropriate to the harbor in question:

(a) the land area must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a water area meeting the criteria set forth in 301 CMR 25.04(1);

(b) the land area must lie in reasonable proximity to:

1. established road or rail links leading to major trunk or arterial routes; and
2. water and sewer facilities capable of supporting general industrial use;

(c) the land area must exhibit a topography that is generally conducive to industrial use, or reasonably capable of becoming so in terms of technology, cost, and other appropriate factors governing engineering feasibility; and

(d) the land area must exhibit a use character that is predominately industrial, or reasonably capable of becoming so because it does not contain a dense concentration of:

1. non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or
2. residential, commercial, recreational, or other uses that unavoidably would be destabilized if commingled with industrial activity.

(3) Commentary. As a general rule, CZM intends to apply the foregoing suitability criteria in the context of groups of parcels that form coherent planning units, rather than to individual project sites or other properties under common ownership or control. DPA-related attributes typically vary across different parcels, such that the combined characteristics of associated parcels in the same general vicinity are not reflected accurately in the characteristics of any single property. For this reason, it is important that geographic areas subject to review be sized and configured in a manner that allows consideration of all relevant factors affecting overall suitability to accommodate water-dependent industrial use.

25.05: DPA Boundary Maps

(1) Maps. Maps showing DPA boundaries currently in effect are available from CZM.

(2) Boundary Delineation. Except as otherwise deemed appropriate by the Director, DPA boundaries shall coincide to the maximum extent practicable with roadways, property lines, or other physical or legal landmarks that are generally permanent and can be ascertained with relative ease through field observation or inspection of scaled maps available from municipalities or other government sources. Notwithstanding any other provision of 301 CMR 25.00, CZM may make minor adjustments of an existing DPA boundary to facilitate its identification in relation to such physical or legal landmarks, provided however that such adjustments generally should not result in a net reduction in the total area of the DPA. Unless otherwise specified in a designation decision issued pursuant to 301 CMR 25.00, any public or private way serving as the boundary of a DPA shall be included in its entirety.

(3) Boundary Determinations. It is the exclusive responsibility of CZM to formally interpret the DPA boundary maps to determine whether any specific parcel or portion thereof is included in a DPA. Any person who desires a boundary determination shall submit a written request to CZM, and shall provide copies of the request to DEP and to such other persons as CZM may require.

25.06: Miscellaneous

- (1) Effects of Designation on EOE Agency Actions. Inclusion of lands and waters in a Designated Port Area shall have the following effects:
- (a) in accordance with 301 CMR 21.00, CZM review of federal activities within or impacting a Designated Port Area shall ensure that such activities are consistent with the purposes of 301 CMR 25.00, which implement an enforceable policy of the approved CZM Program;
 - (b) in accordance with 301 CMR 20.00, all appropriate EOE agencies shall enforce their laws, process regulatory reviews, conduct program activities, disburse funds, construct or supervise the construction of works, or otherwise administer their programs as they relate to DPAs so as to advance the purposes of 301 CMR 25.00.
- (2) Applicability of Designation. A decision under 301 CMR 25.00 to include a new area of land or water in a DPA shall not apply to a project within such area if, prior to the date the notice of commencement of review was published in the *Environmental Monitor*:
- (a) the public comment period on a license or permit application under M.G.L. c. 91 had commenced, in accordance with the notice requirements of 310 CMR 9.13(1); and
 - (b) applications were submitted and accepted for all other state and federal approvals required for the project, including but not limited to any federal consistency certification to be obtained from CZM.
- (3) Clarification of Designation. Upon the request of any interested person, CZM may issue written clarification of a designation decision or minor map corrections, as necessary to serve the purposes of 301 CMR 25.00.
- (4) Saturday, Sunday, Legal Holiday. When the last day for an action under 301 CMR 25.00 falls on a Saturday, Sunday, or legal holiday, the action shall occur on the next business day. When the last day of the receipt of comments or receipt of documents for publication in the *Environmental Monitor* falls on a Saturday, Sunday, or legal holiday, CZM shall accept comments or documents on the next succeeding business day.
- (5) Distribution of Notice. All public notices prepared in accordance with 301 CMR 25.03 shall be sent, on or before the date the notice is published in the *Environmental Monitor*, to the following:
- (a) the municipal official, the planning board, the conservation commission, the City Council or other municipal body with authority to enact zoning, and the harbormaster, if any, of any municipality where the area subject to review is located;
 - (b) any party requesting a review under 301 CMR 25.03(1);
 - (c) DEP, Division of Wetlands and Waterways, and Regional Environmental Engineer;
 - (d) Department of Environmental Management, Division of Waterways;
 - (e) Massachusetts Port Authority, Maritime Division and Planning and Development Division, as applicable;
 - (f) Executive Office of Transportation and Construction;
 - (g) Executive Office of Communities and Development, State Clearinghouse;
 - (h) Executive Office of Economic Affairs;
 - (i) Regional planning agencies or land use commissions, as applicable;
 - (j) U.S. Army Corps of Engineers, New England Division;
 - (k) any person who had previously submitted written comments in the proceeding or had requested, in writing, notification and provided the address to which notice should be sent; and
 - (l) any other person deemed appropriate by CZM. *Case PC's* *(Seaport Council)*
- (6) Severability. If any provision of 301 CMR 25.00 or the application thereof is held to be invalid, the holding shall not affect the validity of any other provision of 301 CMR 25.00.

REGULATORY AUTHORITY

301 CMR 25.00: M.G.L. c. 21A, §§ 2 and 4A.

